

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO 3059 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No @@@

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

KAMLESH @ KMLI DAYARAM JESWANI

JESWANI

Versus

STATE OF GUJARAT

Appearance:

Mr.H.R.Prajapati, for M/S THAKKAR ASSOC. for Petitioner
Ms.S.S.Talati, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 26/11/98

ORAL JUDGEMENT

1. This writ petition under Article 226 of the Constitution of India contains two prayers, one writ in the nature of certiorari for quashing the detention order dated 31.3.1998 and the second in the nature of habeas Corpus for immediate release of the petitioner from illegal detention in pursuance of the said order.

2. The Police Commissioner, Ahmedabad City, under Section 3(2) of the Prevention of Anti-Social Activities Act, 1985 (for short "PASA Act") passed the impugned order of detention against the petitioner on the ground that the petitioner is a bootlegger and his activities are anti-social which have the effect of disturbing public order and are also prejudicial for maintenance of public order. Considering that the alternative remedies which could be taken against the petitioner under Section 93 of the Prohibition Act or under Section 56(B) of the Bombay Police Act would not be efficacious the order for preventive detention against the petitioner was passed.

3. This order has been challenged by the learned Counsel for the petitioner on two grounds.

4. First contention is that the disclosed activities of the petitioner do not disturb the public order and cannot be said to be prejudicial for maintenance of public order. This contention has substance. The grounds of detention show that seven cases under the Prohibition Act were registered against the petitioner in the years 1997 and 1998. All the cases are under investigation. Charge sheet has not been submitted in any case so far. Thus, for the purposes of Section 2(b) of the PASA Act the petitioner can be said to be bootlegger who is repeating his activity as such. However, mere involvement in bootlegging activity is not enough to place the petitioner under the preventive detention. Further requirement of the Act is that the activity of the petitioner must be prejudicial to maintenance of public order. There is no indication that in all the seven cases under the Prohibition Act registered against the petitioner he created any law and order situation or situation disruptive of public order when search of premises was taken and recovery of several bottles of foreign liquor was made from him. These activities, therefore, per se cannot be termed as

activities prejudicial to maintenance of public order. If at all these activities can be said to have created law and order problem inasmuch as the petitioner was violating the prohibition law contained under the Prohibition Act. Since he has been booked in all the seven cases under the Prohibition Act the law and order situation has been tackled successfully and it does not travel in the realm of public order situation.

5. Two incidents of 23.3.1998 were disclosed by two witnesses who preferred to remain secret and requested that their identity and addresses should not be disclosed because of fear of the petitioner. These two activities on bare perusal, cannot be said to be prejudicial to maintenance of public order. These are stray incidents in which the two witnesses on mere suspicion that they are police informant were beaten by the petitioner. It is difficult to appreciate that such activity is likely to disturb the public order or had actually disturbed public order in the concerned locality. No doubt in the grounds of detention it is mentioned that on account of first incident dated 23.3.1998 for some time public life was got disturbed but this does not mean that public order was disturbed.

6. In the result the complained activities of the petitioner, may be anti-social, may be bootlegging, but were not prejudicial for maintenance of public order and as such preventive detention on account of such activities cannot be sustained.

7. The second contention has been that the representation sent on behalf of the detenu was not considered. This ground has no force. In the writ petition it is mentioned that the representation was sent by Advocate of detenu. In the counter Affidavit of Shri J.R.Rajput, Under Secretary, Government of Gujarat, it has been deposed that no representation from detenu's Advocate was received in the Home Department. On the other hand representation dated 4.4.1998 made by the Advocate of the detenu was neither received nor it is on the file of the State Government, hence the question of its consideration did not arise. The affidavit seems to be incomplete. Learned A.G.P. after perusing the original record with her made a statement that the representation dated 4.3.1998 was sent by the detenu and it was received by the Home Minister of the State on 7.4.1998. It travelled through departments and reached the concerned department, viz. Home Department on 15.4.1998, it was decided and rejected on 22.4.1998 and rejection order was communicated to the detenu. There is

no reason to disbelieve this statement of learned A.G.P. based on record. Thus, the representation sent by the detenu's brother was considered and rejected. The grounds of detention show that the representation should have been addressed to the Deputy Secretary, Home Department of the State of Gujarat. On the other hand it was addressed to the Home Minister of the State of Gujarat. Naturally it took some time to reach the concerned department and after necessary consideration it was rejected within a week. There is thus no delay in disposal of representation and this is no ground for quashing the detention order.

8. However, on the first ground, viz. that the activities of the petitioner would not prejudicial to the maintenance of public order, the petition succeeds and is allowed. The detention order dated 31.3.1998 is hereby quashed and the petitioner shall be released forthwith unless he is wanted in some other criminal case.

sd/-

(D. C. Srivastava, J.)

* * * * *

sas